



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: February 15, 2007

RE: "Environmental Justice in the News" for the Week Ending February 16, 2007

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This memorandum summarizes select environmental justice news actions for the period beginning January 19, 2007 through the week ending February 16, 2007. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that articles on international or foreign-based environmental justice issues were not included.

1. **News Items.**

The following news was particularly noteworthy:

- **"Democrats Face Grassroots Push for Stronger Environmental Justice Plans," Inside EPA (Feb. 9, 2006).** According to the article, grassroots groups are pressing Democrats in Congress to "tighten federal environmental justice and civil policies." In addition, the groups asserted that recent legislative proposals "do not go far enough to protect low-income and minority communities from pollution." The pressure to strengthen the legislative proposals, including a proposal to codify Executive Order 12898 and define environmental justice, may result in a confrontation with the "Bush Administration over its controversial decision to drop race as a factor in determining whether pollution harms communities." The grassroots groups are concerned that the draft legislative proposals will not ensure that the United States Environmental Protection Agency ("EPA") addresses environmental justice concerns.

- **“Applications for EPA Healthy Community Grants Now Accepted,” Environmental Protection Agency Documents and Publications (Feb. 7, 2007).** According to the article, “EPA’s Healthy Communities Grant Program is accepting initial proposals for grants of up to \$35,000 to support projects benefiting one or more New England states.” The Grant Program integrates nine EPA New England programs and combines available resources to identify “competitive projects that will achieve measurable environmental and public health results in communities across New England.” The Grant Program funds projects that, among other things, target resources to benefit at risk communities, such as environmental justice areas of potential concern. EPA will evaluate the one-page project summaries, which are due by March 16, 2007. If the applicant’s summary meets EPA standards, that applicant will then be invited to submit a full proposal. EPA plans to award 20-25 grants, ranging from \$5,000 to \$35,000, for one or two-year projects.
- **“EPA Defends Public Involvement Policies under Privatization Plan,” Defense Environment Alert (Feb. 6, 2007).** According to the article, EPA’s proposal to privatize the cleanup at the former Fort Ord military base near Monterey Bay, California has drawn criticism from activists who “fear the EPA proposal for [Fort Ord] will set a national precedent that breaches environmental justice policies.” In response, an official in EPA’s Region IX articulated that “public involvement requirements will not change and that [EPA] still may use the proposal as a potential model for similar sites around the country.” An Administrative Order on Consent (“AOC”) to clean nearly 4,000 acres of unexploded ordnance-contaminated land at the site is at issue. The AOC would allow a private party to clean the site. Activists argue for the withdrawal of the AOC for its failure to “comply with EPA’s environmental justice mandates and policies as it does not require and assure a mechanism for continued public participation and meaningful involvement of community and tribal members.”
- **“Study to Track Post-Katrina Asthma in Kids,” US States News (Feb. 6, 2007).** The article set forth a news release that Tulane University issued regarding its joint initiative with the New Orleans Department of Health to “lead a 30-month study called HEAL: Head-off Environmental Asthma in Louisiana.” The study will research the effects of mold and other indoor allergens on children with asthma in post-Katrina New Orleans. One primary reason for the study is the finding that asthma rates have increased “nationally, especially among minority inner-city children, where nearly one in four children have asthma.”
- **“Plans Announced to Close Hartford Landfill by End of 2008,” US States News (Feb. 7, 2007).** The article set forth a news release from the Connecticut Department of Environmental Protection (“Department”) that

announced “major steps forward on plans to close the Hartford landfill in a manner that protects natural resources and the public health.” One commentator on the development asserted that the plan to close the landfill represented “a turning point for environmental justice in Connecticut.” Specifically, he noted that the closure will “increase environmental benefits in low-income communities and communities of color that bear the onus of environmental hazards for the State and enjoy fewer benefits.” The commentator was particularly pleased with the fact that diesel emissions from garbage trucks would be reduced.

- **“Low Radon Levels Recorded in Alton Park,” Chattanooga Times Free Press (Feb. 5, 2007) at B2.** According to the article, homes in Alton Park, Tennessee had low radon levels based on early test results of a project that the Alton Park/Piney Woods Environmental Health and Justice Collaborative/Chattanooga-Hamilton County Health Department coordinated. The first ten homes demonstrated radon levels below the EPA safety threshold. Radon is a natural, odorless gas that is linked to fatal lung cancer. The collaborative, which distributed 300 free radon kits to residents in Alton Park, undertook the project because many neighborhood residents “believe they have health problems because of their environmental exposure to toxic chemicals.”
- **“NACWA Seeks Flexibility in Evaluating Resources for CSO Controls,” Water Policy Report (Feb. 5, 2007).** According to the article, the National Association of Clean Water Agencies (“NACWA”) sent recommendations on January 10, 2007 to Benjamin Grumbles, EPA’s Assistant Administrator for the Office of Water, urging EPA to rethink its approach outlined in its guidance “Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development.” Specifically, NACWA, among other things, calls on EPA “to develop regulatory policies to address the interrelationship of wet weather issues, and includes a number of principles the Agency should incorporate into these policies.” The principles include that “environmental improvements should be structured so as to mitigate the potential adverse impact of their cost on distressed populations. ‘Environmental justice considerations, therefore, are appropriate to incorporate in site and schedule determinations of program requirements.’” In addition, NACWA outlines a potential framework for considering various local conditions. The framework discusses four categories of impacts, including environmental justice, which “would provide for explicit recognition of impacts on low-income and disadvantaged communities.”
- **“State Foundry Agrees to Slash Air Pollution; West Berkeley: Pacific Steel Will Cut Hazardous Emissions by 2 Tons Each Year Under Settlement with Lawsuit Plaintiff,” Contra Costa Times (CA Feb. 2, 2007) at 4.** According to the article, Pacific Steel Casting (“Pacific

Steel”), a steel foundry in West Berkeley, California, reached a settlement agreement with Communities for a Better Environment (“CBE”) to reduce its hazardous air pollutants by at least 2 tons annually. Pacific Steel was sued three times last year for allegedly causing health problems and emitting a foul odor from its facility. CBE was happy with the agreement, since it will, among other things, “forge a meaningful relationship between environmental justice and labor and create the opening for a long-term process to tackle a complex set of issues with business.”

- **“Lehman College Researchers Uncover Link between Asthma, Air Pollution in Bronx,” US States News (Feb. 2, 2007).** The article set forth a press release from the City University of New York that announced a finding from researchers at Lehman College that show “a definite link between asthma hospitalizations and air pollution in the Bronx.” Researchers at Lehman College specifically found that “people living in close proximity to a major pollution source were 25 percent more likely, overall, to be hospitalized for asthma than those not living in close proximity to these sources.” According to the lead researcher of the study, the findings “point to a health and environmental justice crisis,” as the people living within the pollutant buffers were more likely to be poor and minority. Including among the pollution sources were Toxic Release Inventory facilities and major stationary point sources of air pollution.
- **“Bay Area; What to Expect If Bay Waters Rise by a Meter; S.F., Oakland Airports, Giants Ballpark, Roads Would be Flooded,” San Francisco Chronicle (Feb. 1, 2007) at B1.** According to the article, the expected rise of the oceans in San Francisco and Oakland will likely flood their airports, “cover highways and inundate Treasure Island, the Giants Ballpark, and parts of Alameda and Silicon Valley.” Mary Nichols, a top official from the Los Angeles Department of Water and Power, noted that “the decisions on which properties to protect will inevitably involve race, class, and poverty.” Accordingly, she characterized the potential flooding as an environmental justice issue that will become “hugely contentious.”
- **“Massachusetts Department of Environmental Protection Penalizes Townsend Oil Company \$15,000 for Failing to Report Oil Losses at Residence Due to Leaking Oil Feed Line,” US States News (Feb. 1, 2007).** The article set forth a press release from the Massachusetts Department of Environmental Protection (“DEP”) that announced that DEP had assessed a \$15,000 penalty against Townsend Oil Company (“Townsend”), an oil-delivery company, for a home oil leak. In alternative to paying a penalty to DEP, Townsend will implement a Supplemental Environmental Project (“SEP”). Townsend will include in the SEP its agreement to “focus feed line or safety valve installation effort towards homes in [environmental justice] communities. [Environmental justice] areas are those that include many densely populated urban neighborhoods in and around the State’s oldest industrial sites. These

neighborhoods encompass only a small portion of the land area of the Commonwealth (less than 5 percent), but they are home to a large percentage of the State's population (nearly 29 percent)."

- **"Redifuel Meeting Creates Turmoil," San Antonio Express-News (Jan. 31, 2007) at 1SE.** According to the article, a public meeting on January 23, 2007 to discuss the potential rezoning of Redifuel's facility, which involved two, million gallon fuel tanks caused heated debate. Residents near the proposed rezoned area articulated their opposition to fuel storage tanks and claimed that placement of the tanks in the area constituted unspecified environmental racism. The proposed rezoned site is very close to the local high school, and students also voiced their opposition to the site on the basis of unspecified environmental racism.
- **"California Air Resource Board Names Members to Environmental Justice and Economic and Technology," US States News (Jan. 26, 2007).** The article set forth a press release from the California Air Resources Board ("Board") that announced, among other things, the formation of the Environmental Justice Advisory Committee, which will "ensure that environmental justice issues are identified and considered in the implementation of" the California Global Warming Solutions Act of 2006 (AB 32). The ten member committee "will be instrumental in providing advice and guidance to [the Board] based on their experience and involvement with environmental justice and community groups."
- **"Activists Charge DTSC Skipping Public Process in Facility Expansions," Inside Cal/EPA (Jan. 26, 2007).** According to the article, environmental justice groups will challenge California's Department of Toxic Substances Control ("DTSC") for its "handling of several hazardous waste facility expansions that were approved or that are expected to be approved . . . [by skipping] public participation requirements mandated by law." The DTSC disagreed and defended its issuance of a permit to Industrial Services Oil Co., Inc, which proposed to "expand its hazardous waste treatment and storage practices by accepting more types of hazardous waste." The environmental justice groups will assert that DTSC failed to properly follow public participation requirements. In addition, the groups will call for a local advisory committee to participate at the local level and help the community understand the implications of the facility expansion.
- **"26 of 27 Wilkerson Bills Are Filed Late. Missed Deadline a 'Glitch,' Aide Says," Boston Globe (Jan. 24, 2007) at B1.** According to the article, Senator Dianne Wilkerson (D-Roxbury) has "failed to file all but one of her 27 bills for the upcoming legislative session by the Jan. 10 due date." The late bills, however, may still be considered but first must go to a special committee and be approved for submission. Such procedure may delay the bills indefinitely. One of the bills included an "act to create

environmental justice.” Senator Wilkerson articulated that this bill “would “address the high concentration of industry and pollution in low-income and minority communities,” and was of “particular importance to so many residents, especially children in the Commonwealth.”

- **“Landfills Can be a Help to Poor Counties, but North Carolina Must Take a Stronger Hand in Regulating Them,” News & Observer (N.C. Jan. 22, 2007) at A8.** The editorial discussed the moratorium on large landfills that the State’s legislature enacted last year. Specifically, the editorial noted that the moratorium “gave state environmental regulators the time needed to create proposed landfill rules that at first glance appear to place sensible controls on an industry that may be necessary but is rarely welcomed.” The proposed regulations have been presented to the legislative committee and “would toughen financial requirements for landfill operators, require state and not just local approval for large landfills, and impose fees to clean up landfills that might be abandoned in the future.” Based on the proposal, the editorial asserted that “[h]ard-pressed counties also should be spared the temptation to weaken landfill requirements . . . to draw jobs. North Carolina has already faced unsettling accusations of environmental racism that ring true when landfills always seem to find their way to poor regions.”
- **“Odors from Pacific Steel Casting Still Burning Noses – and Tempers,” East Bay Business Times (CA Jan. 22, 2007).** According to the article, efforts of Pacific Steel Casting to eliminate odors from its foundry in West Berkeley California have failed based on complaints from neighborhood groups “who say that odors from the foundry’s operations linger.” One group, Green Action for Health and Environmental Justice, urged the City to take action against the foundry to take away the odors. Pacific Steel Casting, however, believes that as a result of its \$2 million odor-abatement filter system, the odor has been abated substantially.
- **“Effort Aims to Close Health Gap; San Bernardino County: Minorities Are More Likely to Suffer Diabetes and Die from Strokes,” Press Enterprise (CA Jan. 21, 2007) at B1.** According to the article, public health officials and community activists of San Bernardino County, California are concerned with the apparent health disparities between the County’s minority and white residents. According to the County Health Department, “8 percent of black adults and 11 percent of Hispanics have been diagnosed with diabetes, compared with 7 percent of whites.” One of the County’s health officer’s articulated that the “disparities are a significant concern,” although the County has not performed any research to pinpoint the reasons for the health differences. Community leaders, however, attribute the disparity to various factors, including “less access to health care, a distrust of health professionals, poor diet and the physical environment, such as a lack of sidewalks in predominantly minority neighborhoods.”

- **“Massachusetts Department of Environmental Protection Penalizes Charlestown Dry Cleaner \$33,000 for Incomplete Cleanup of its 245 Main Street Location,” US States News (Jan. 17, 2007).** The article set forth a press release that the Massachusetts Department of Environmental Protection (“DEP”) issued regarding a penalty that DEP imposed upon Tuttles Cleaners for “failing to complete the cleanup of a release of perchloroethylene (“PCE”) at its 245 Main Street location in Charlestown. PCE is a solvent used by some dry cleaners that is a listed hazardous material under the State’s Waste Site Cleanup regulations.” The press release noted that Tuttles is situated in an environmental justice residential area that was densely populated. DEP prioritizes the prompt cleanup in environmental justice areas, which “encompass only a small portion of the land area of the Commonwealth (less than 5%), but they are home to a large percentage of the State’s population (nearly 29%).

2. **Recent Litigation.**

- No noteworthy ***“Recent Litigation”*** was identified for this time period.

3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

A. **Federal Congressional Bills and Matters.**

- No noteworthy ***“Federal Congressional Bills and Matters”*** were identified for this time period.
- ***“Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice.”***
 — **153 CONG. REC. E 160 (Extensions of Remarks Jan. 19, 2007) (statement of Rep. Hastings).** Congressman Alcee Hastings (D-FL) spoke in “strong support of the CLEAN Energy Act of 2007,” which related to the “creation of long-term energy alternatives.” In his remarks, Congressman Hastings urged his colleagues to “move beyond the obvious motivations for responsible energy policies” and “acknowledge the true impact of these challenges on our Nation’s most vulnerable populations. In this sense, progressive energy policy is inextricably linked with the pursuit of true environmental justice.” Congressman Hastings wanted to “confront the diminishing life changes and debilitating health conditions attributed to polluting energy sources.” He cited, among other things, the increase in asthma among African-American populations over the past few decades, particularly in comparison to the white population. He concluded that it was important to “understand the root cause of this disparity and take action to pursue alternative sources of energy for posterity.”

- **Federal Register Notices.**
 - **EPA, Environmental Impact Statements and Regulations; Availability of EPA Comments, 72 Fed. Reg. 5048 (Feb. 2, 2007).** EPA announced the availability of its comments pursuant to the Environmental Review Process (“ERP”), as required by Section 309 of the CAA and Section 102(2)(c) of the National Environmental Policy Act (“NEPA”). With regard to the final Environmental Impact Statements, EPA raised concerns with the “WA-167 Freeway Project,” from 161 (Meridan Street North) in the City of Puyallup to the WA-509 Freeway in the City of Tacoma. Specifically, EPA had environmental concerns “about loss of prime farmland, and impacts to listed fish species, water quality, and wildlife habitat connectivity. EPA has further concerns about noise, air toxics, and environmental justice and tribal issues.”

B. State Congressional Bills and Matters.

- **California, Assembly Bill 233, introduced on January 30, 2007 by Assemblyman Dave Jones (D-District 9). Status: *Introduced. May Be Heard in Committee on March 2, 2007.*** The Bill, entitled the “Children’s Breathing Rights Act,” would “increase the maximum penalties for specified violations of air pollution laws. The Bill would enact criminal and civil penalties for additional specified violations of air pollution laws that result in substantial risk of actual injury, and for making certain false statements, representations, or certifications. The Bill would also require the State Air Resources Board to post on its Internet Web site certain information on air quality violations, which the Bill would require the districts to report to the state board, and would require the districts to jointly develop with the state board a format for presenting this information.” The Bill stems from numerous legislative findings, including that “[i]f [the State] improve[s] the statutes governing violations of [its] air quality laws and ensure[s] that adequate penalties are available to deter even the most serious air pollution violations, [the State’s] children’s right to clean and healthy air can be better protected, as can the right to environmental justice.”
- **California, Senate Bill 162, introduced on January 30, 2007 by Senator Gloria Negrete McLeod (D-District 32). Status: *Referred to Assembly Committee on Rules on January 30, 2007. May be Acted Upon on or after March 2, 2007.*** The Bill amends the list of factors “that a local agency formation commission is required to consider in the review of a proposal for a change of organization or reorganization. The Bill “would require a local agency formation commission to consider information or comments from voters or residents of the affected territory

and the extent that the proposal will promote environmental justice, as defined, thus creating a state-mandated local program.”

- **Connecticut, House Bill 6767, introduced on January 23, 2007 by Richard Roy (D-District 119). Status: Referred to Joint Committee on the Environment on January 23, 2007. See also Connecticut, Senate Bill 985, introduced on January 23, 2007 by Senator Mary Ann Handley (D-District 4). Status: Referred to Joint Committee on the Environment on January 23, 2007; Connecticut, Senate Bill 986, introduced on January 23, 2007 by Senator Donald J. DeFronzo (D-District 6). Status: Referred to Joint Committee on the Environment on January 23, 2007.** The companion Bills concern Environmental Justice and seek to prevent overburdening communities with pollution. Specifically, the Bills seek to amend general statutes to “require the Department of Environmental Protection, Department of Public Utility Control, and the Connecticut Siting Council to each adopt regulations that describe the department’s or council’s procedures concerning the consideration of environmental justice in granting licenses, permits, authorizations, or other actions that relate to affecting facilities, and for each department or council to adopt regulations that describe the actions that each department or council shall take to reduce the incidence of pollution in overburdened communities.”
- **Hawaii, House Concurrent Resolution 24, introduced on January 19, 2007 by Congresswoman Mele Carroll (D-District 13). Status: Offered on January 22, 2007.** The Concurrent Resolution expresses disapproval with federal enforcement of Executive Order 12898. The Resolution strongly urges EPA to “develop plans, goals, and performance standards to carry out Executive Order 12898 and effect environmental justice in minority and low-income areas.” Certified copies of the Resolution was to be transmitted to, among others, EPA’s Administrator.
- **Hawaii, House Bill 678, introduced on January 19, 2007 by Congressman Marcus R. Oshiro (D-District 39). Status: Bill Scheduled to be Heard by House Energy and Environmental Protection Committee on February 1, 2007. See also Hawaii, Senate Bill 1612, introduced on January 22, 2007 by Senator Colleen Hanabusa (D-District 21). Status: Referred to Senate Energy and Environment Committee and Senate Ways and Means Committee on January 30, 2007.** The Companion Bills require the Department of Health to adopt reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance. The Bills also require the adoption of a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020. In addition, the Bills require the adoption of rules to achieve the maximum technologically feasible and cost-effective greenhouse gas emission

reductions. The Bills authorize the adoption of market-based compliance mechanisms. Finally, the Bills establish an Environmental Justice Advisory Committee, which shall consist of at least three members. The Committee will advise in the development of a scoping plan.

- **New York, Assembly Bill 2775, introduced on January 19, 2007 by Assemblywoman Deborah J. Glick (D-District 66). Status: Referred to Assembly Committee on Corporations, Authorities, and Commissions on January 19, 2007.** The Bill seeks to determine the process and timeframe by which the Metropolitan Transportation Authority (“MTA”) plans to convert their existing diesel bus fleet to an alternative fuel vehicle fleet by requiring the development of a long-range strategic plan for such purposes. Advancing environmental equity should be included among the provisions of such plan.
- **New York, Assembly Bill 4493, introduced on February 2, 2007 by Assemblywoman Vivian E. Cook (D-District 32). Status: Referred to Assembly Environmental Conservation Committee on February 2, 2007.** The Bill amends the Environmental Conservation Law to create an interagency task force on environmental justice to ensure the equitable distribution of environmental benefits and burdens and to avoid risks to the environmental health and benefits of people. The Bill establishes a Task Force on Environmental Justice comprised of twenty-five members that the Governor appoints. The Bill specified that eight of the members shall represent racial and ethnic minorities or low-income communities.
- **Tennessee, House Bill 757, introduced on February 7, 2007 by Congressman Michael Ray McDonald (D-District 44). Status: Introduced. See also Tennessee, Senate Bill 878, introduced on February 7, 2007 by Senator Raymond Finney (R-District 8). Status: Introduced.** The Bills seek to establish a statewide biomonitoring program to “assist in the evaluation of the presence of toxic chemicals in a representative sample of Tennesseans, establish trends in the levels of these chemicals in Tennesseans’ bodies over time, and assess effectiveness of public health efforts and regulatory programs to decrease exposures of Tennesseans to specific chemical contaminants.” The Bills specify that the program “shall utilize the principles of [the Tennessee Department of Environment and Conservation’s (“TDEC”)] environmental justice program, so that the activities of the panel and the implementation of the program provide opportunities for public participation and community capacity building with meaningful stakeholder input.”
- **Tennessee, Senate Bill 1779, introduced on February 8, 2007 by Senator Doug Jackson (D-District 25). Status: Introduced.** The Bill directs Tennessee State University and Middle Tennessee State University to “continue the joint solid waste study to determine as practicable means

to eliminate from the landfills food waste, yard waste, hazardous waste, chemicals, and other materials which decompose into a liquid or gas or which may make the landfill or leachate more toxic.” The Bill came about due to certain findings of an initial joint study of the two universities, which included the finding that “solid waste and landfills often inflict the poor, minority, and disenfranchised, and are issues of environmental injustice.”

- **Texas, House Bill 947, introduced on January 30, 2007 by Congresswoman Yvonne Davis (D-District 111). *Status: Filed.*** The Bill relates to a Bill of Rights for the underprivileged. Among other things, the Bill provides a section for environmental equality and recognized that “the underprivileged must be protected from environmental racism that disproportionately targets impoverished communities with toxic waste sites and other elements that adversely affect the atmosphere and health of persons in those communities.” In addition, the Bill articulates the intent of legislature that: “(1) toxic waste sites be cleaned up immediately; and (2) environmentally unsafe facilities in impoverished communities that have been victimized by environmental racism be cleaned up, removed, or replaced.”
- **Texas, House Concurrent Resolution 36, introduced on January 22, 2007 by Congresswoman Yvonne Davis (D-District 111). *Status: Filed.*** The Concurrent Resolution expresses support for the Bill of Rights for the poor. The Concurrent lists ten principles in support of the Bill of Rights, which included, among others, “the poor must be protected from environmental racism that disproportionately targets impoverished communities with toxic waste sites and other elements that adversely affect the atmosphere and health of persons in those communities.”
- **Washington, House Bill 1601, introduced on January 24, 2007 by Congresswoman Christine Rolfes (D-District 23). *Status: First Reading. Referred to House Select Committee on Environmental Health on January 24, 2007.*** The Bill creates the Children’s Environmental Health and Protection Advisory Council. The Council was created based on the finding that “higher rates of poverty place children of ethnic and minority communities at disproportionate risk for environmental exposures due to inadequate housing, poor nutrition, and limited access to health care.” The Council, which will consist of fifteen members, will address these issues and provide a report annually with recommendations to reduce children’s exposure to environmental hazards.
- **State Regulatory Alerts.**

— No noteworthy “*State Regulatory Alerts*” was identified for this time period.